The State, seeking to answer questions on equal protection and due process, quotes William Blake (St. Ans. p. 9):

"*One law for the lion and the ox is oppression.*"

Does this mean that there is to be one law for petitioner, who had no felony record,(*) who was allowed bail after the verdict,(**)—bail never sought to be revoked by the State pending sentence—, and a different law for those allowed bail by Illinois,—a list of cases where bail was allowed in Illinois is set out (Pet. Br., p. 12). The State does not show any standard on which bail was allowed in those cases and denied to petitioner.(***)

(*) The State set out petitioner's full prior record (S. Br., p. 13): misdemeanor or ordinance violations, without serious punishment, overcharacterized, with this limitation by the State as "apparent habitual violent and anti-social behavior."

(**) As set out below, the State (S. Br., p. 14) seeks to lead this Court to understand that the trial court was not aware of all of the facts when it allowed bail pending sentence. The record—set out in full (Pet. Br., pp. 5-6) shows no new facts.

(***) In *People* v. *Messino, et al.* No. 42616 (1969) Illinois allowed bail, first pending appeal, then pending application to this Court for a writ of certiorari. The writ was denied on February 24, 1970, No. ....., Oct. Term, 1969, and the petitioners surrendered to serve their sentences. The State's Attorney of Cook County does not agree with this Court that generally no sentence should be served until "determination . . . in the court of last resort" (*Motlow, supra*). Instead, commenting on the *Messino* case, he demeaned the allowance of bail pending appeal:

> "They should have been in prison for the last three years, but court technicalities have permitted their freedom on bond." (Chicago Sun Times, February 25, 1970.)

The State's Attorney did not consider this question: what if a conviction is reversed? What about time spent in prison on a wrongful conviction?

On careful analysis, the design of the State's brief is to show that petitioner is a member of an unpopular—though not illegal—group (St. Br., pp. 12-13)—as the sole ground put forth to deny bail on appeal. The State purposefully overlooks the record: the trial court was well aware of petitioner's membership during the entire trial [Trial Abst. pp. 39, 40, 42, 70, 72, 73] and then allowed petitioner released on bail pending sentence.(*) The State tries to make it appear that membership was a factor in denial later of bail on appeal. But the argument that membership would be a ground for denial of bail runs counter to another firmly established principle: if an issue on appeal is not frivolous, that issue cannot form the basis to deny bail on appeal, "the question of the guilt or innocence of an appellant is not an issue on application for bail." *D'Aquino* v. *United States,* 180 F. 2d 271, 272 (9th Cir. 1950) (Douglas, J., Circuit Justice).(**) Denial of bail based on the nature of the conviction alone would nullify the statutory scheme for bail on appeal. *White* v. *United States,* 412 F. 2d 145, 147 (D.C. Cir. 1968)

(*) The trial court did not impose the maximum sentence on the charge in this case.

(**) See footnote, Pet. p. 10 setting out that:

"Abhorrence, however great, of persistent and menacing crime will not excuse transgression in the courts of the legal rights of the worst offenders."

CONCLUSION.

The appeal on the merits is not frivolous. The State has not sustained the burden of showing that petitioner might flee or be a risk to the community. In *Herzog* v. *United States,* 75 S. Ct. 349, 351 (1955), *supra,* Justice Douglas, as a Circuit Justice, in a case preceding the liberalization of the Federal Rules on bail on appeal, stated:

> "Doubts whether [bail on appeal] should be granted or denied should always be resolved in favor of the defendant." citing *Motlow,* supra.

This court should grant review, allow petitioner on bail, and establish fair and uniform standards for bail on appeal in criminal cases.

Respectfully submitted,

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